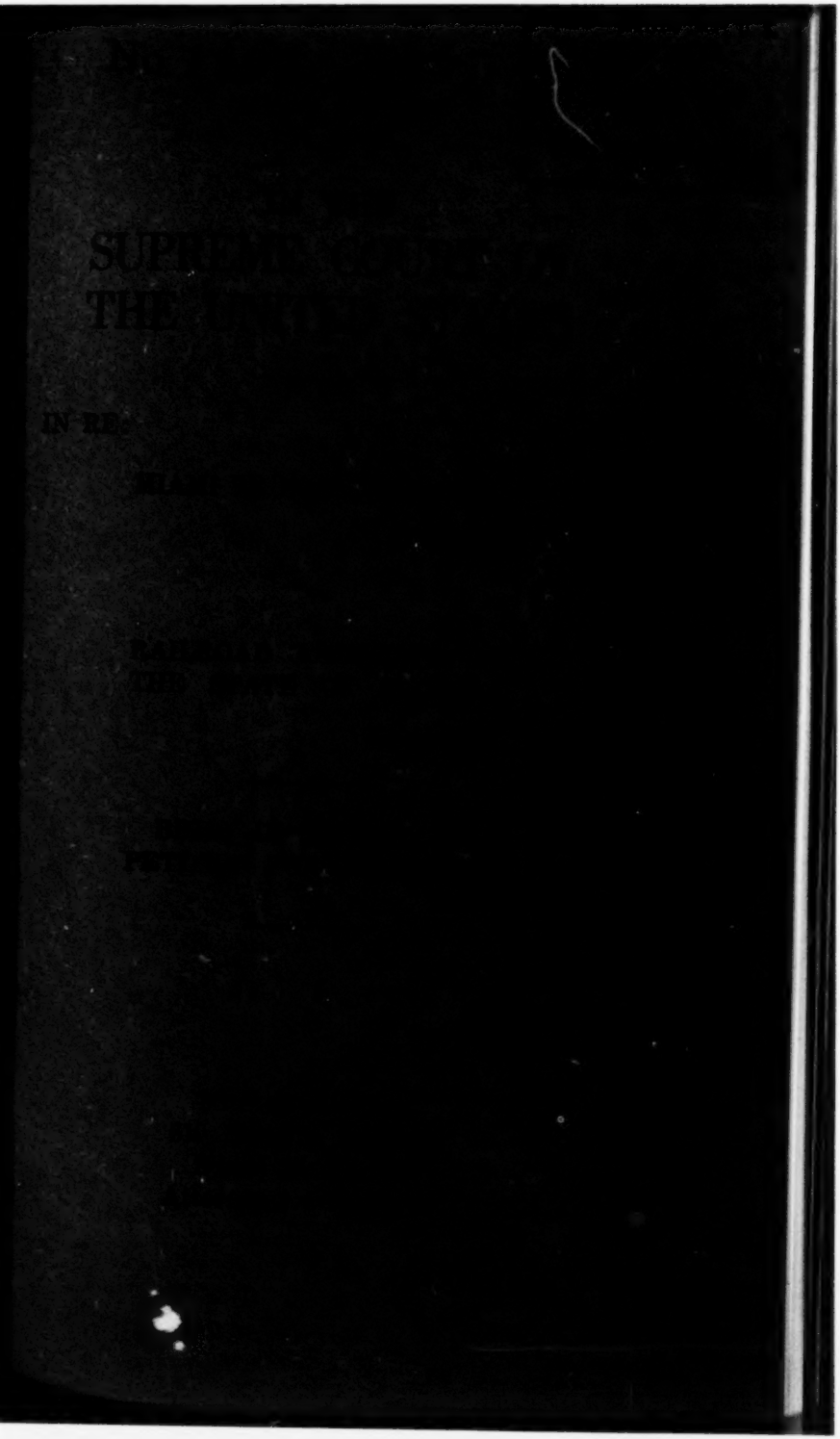

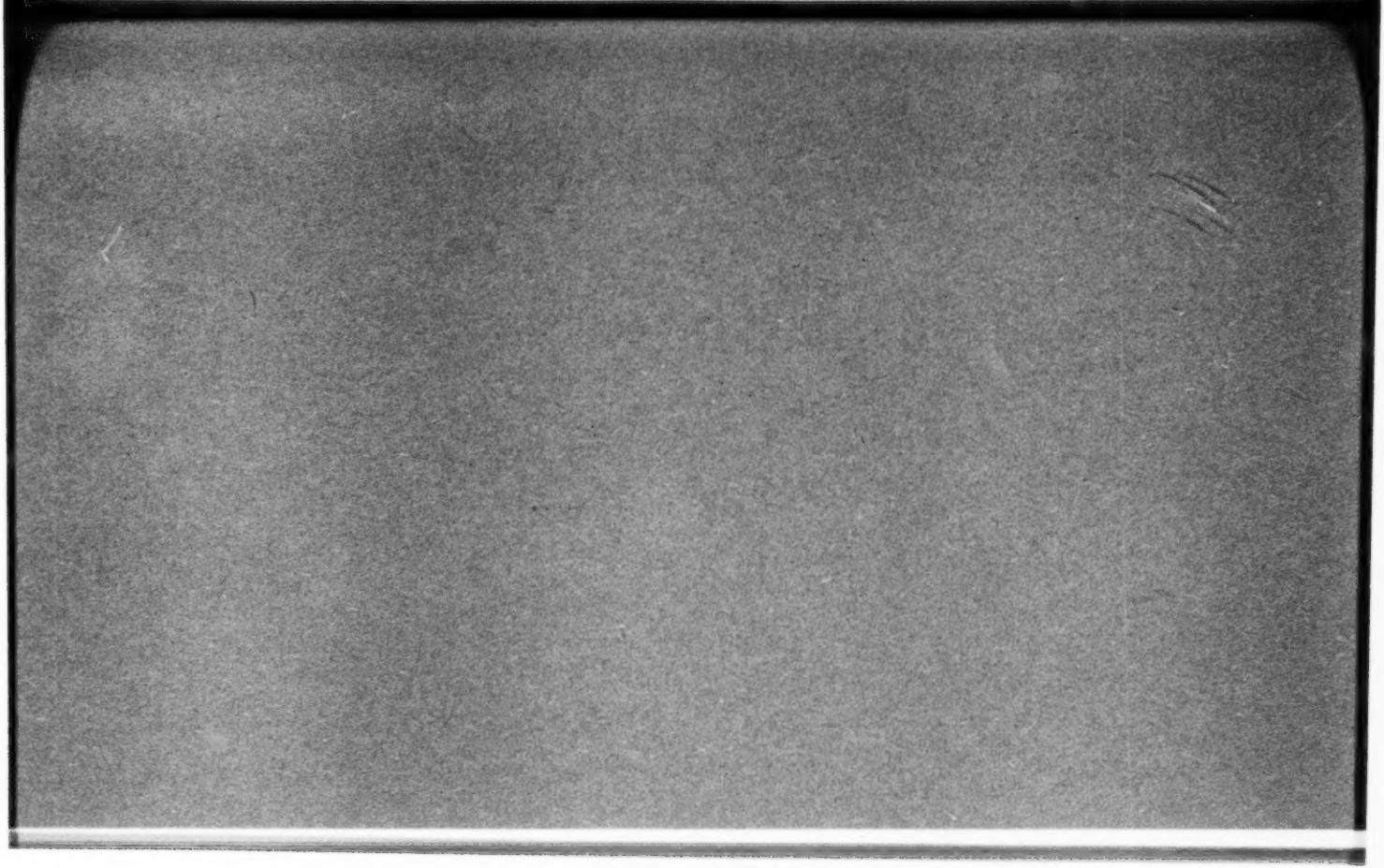

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IN THE
SUPREME COURT OF THE UNITED STATES

IN RE:

MIAMI BRIDGE COMPANY,
Petitioner,

vs.

RAILROAD COMMISSION OF THE STATE OF FLORIDA,
Respondent.

Brief of Mitchell D. Price in Support of Petition for Certiorari.

The judgment from which relief is sought became final on January 26, 1945, at the time the Motion for Re-hearing was denied, and has not been reported either in the Southern Reporter or in the Florida Reports within the knowledge of the petitioner, but a complete copy of said judgment is shown in the Transcript of the Record filed herein, on page 50. A copy of the order made by the Railroad Commission on January 17, 1944, is shown on page 39 of the Transcript filed herein, and has not been otherwise reported.

CONCISE STATEMENT OF THE CASE AND OF THE GROUNDS UPON WHICH THE JURISDICTION OF THIS COURT IS INVOKED.

After long litigation instigated by THE MIAMI BEACH RAILWAY COMPANY, a bus operating corporation, against the MIAMI BRIDGE COMPANY, petitioner herein, a decision was handed down by the Supreme Court of the State of Florida (reported in 12 Southern Reporter (2), page 438) which adjudicated and determined that the petitioner herein is the owner and holder of the Venetian Causeway, a toll bridge connecting the City of Miami and the City of Miami Beach, and that the Miami Bridge Company had the right to operate said bridge and charge reasonable compensation for the right of passage. Thereafter, the Legislature of the State of Florida at its 1943 Session, passed an Act known as Chapter 21,743 entitled,

> "An Act to Amend Section 347.08 of the Florida Statutes 1941, authorizing the State Railroad Commission to regulate the operation of and fix tolls **for certain bridges and causeways** in the State of Florida."

The chapter amended, contained twenty-five sections beginning with Section 347.01 and terminating with Section 347.25, and the amendment aforesaid did not change or in any way alter any section in said Chapter, save and except Section 347.08; that said Chapter 347 contained a section reading as follows:

> "Section 347.20. **Vested Rights Not Impaired.** Nothing in this chapter **shall affect or impair any right or privilege** belonging to any individual or corporation by virtue of any law of this State."

The petitioner herein acquired title to said Venetian

Causeway under Chapter 10,497, Special Acts, enacted by the Legislature of Florida in 1925. Said act in substance provided that if any individual or corporation then or thereafter created would construct a bridge or causeway over the waters and submerged lands of that part of Biscayne Bay lying north of the existing causeway connecting Miami and Miami Beach which would cost approximately one and one-half million dollars, that the person or corporation so constructing said bridge **should have the right to operate same as a toll bridge or toll causeway and to collect toll for the use thereof.** For the protection of the public and to avoid unjust discrimination, the Legislature of the State of Florida placed a maximum rate which could be charged by the person or corporation so constructing said causeway for the use of said causeway, which provided a rate of fifty cents (50c) for a one-way passage of any bus (including the driver) across said causeway, and five cents for each passenger hauled upon said bus. The pleadings in the case show that a bridge was constructed in conformity with said Act and that the Miami Bridge Company is the present owner and holder of said causeway, and its ownership and authority to collect reasonable toll has been adjudicated and determined by the Supreme Court of the State of Florida in the case above cited. The pleadings also show that the Miami Bridge Company, which has been the owner of the Venetian Causeway for many years, **has never charged a toll rate in excess of the maximum fixed by Chapter 10,497.** For the convenience of the Court, a copy of Chapter 10,497, marked Exhibit "A," is attached to the petition filed herein.

On or about the 15th of January, 1944, The Miami

Beach Railway Company, **hereinafter called the bus company,** filed a petition (Tr. p. 14) with the Railroad Commission of Florida requesting said Railroad Commission to assume control of said Venetian Causeway. The record shows that in 1943 there were three public bridges or free causeways across Biscayne Bay, one of which was south of the Venetian Causeway, and the other two north of said causeway; that the bus company had for many years used the free County Causeway immediately south of the Venetian Causeway in the operation of its bus line in carrying passengers between the City of Miami and Miami Beach, and that it charged a fare of 10c for each passenger hauled one-way or 20c for a round trip. The buses operated by the Miami Beach Railway Company are capable of carrying from forty to fifty persons, and when loaded, weigh between ten and fifteen thousand pounds. Each bus operated by the Railway Company, when filled, would gross said company from $4.00 to $5.00 for each one-way passage, but it objected strenuously to paying one-twentieth of that amount as toll for the use of petitioner's expensive bridge. Had the Bridge Company charged the full statutory maximum rate (Ch. 10,497), it could have legally collected $3.00 toll upon a full bus instead of a petty 25c.

The railway (bus operating) company in the petition filed by it with the Railroad Commission, expressly alleged that the Bridge Company made a charge against it of 50c **per round trip** for each and every bus operated over the causeway, and that such charge was "unreasonable, arbitrary, excessive and extortionate." It does not charge that the Bridge Company discriminated against it; neither is any insinuation made that there was any

"**unjust**" discrimination. The only place where the word discrimination is referred to in the petition filed by the bus company, is in its prayer for relief. It prays that the Railroad Commission "prescribe a just, reasonable, non-preferential and **nondiscriminatory** rate for buses using said Venetian Causeway comparable to the rates charged by said Miami Bridge Company for the use of said Venetian Way by automobiles carrying passengers."

In the bus company's petition and in the other pleadings it is clearly shown there was a difference between the service rendered to the bus company and the service rndered to the Venetian Short Ways Inc., who operated a line of automobiles of ordinary size, carrying five or six passengers. There was a difference in size, a difference in passenger carrying capacity and a great difference in wear and tear upon the bridge. The same rate could not fairly be imposed upon both vehicles, any more than a common carrier could be required to ship an elephant for the same rate that they would charge for shipping a dog.

The Supreme Court of the State of Florida seem to have based their entire decision upon the question of discrimination, and yet **no discrimination is shown between two or more patrons for the rendition of similar services,** and the Bridge Company in its petition for writ of certorari expressly offered to give the bus company the same rate which they gave to the Venetian Short Way after January 1, 1945, when their contract with such company expired, **if they would operate vehicles of the same kind** (Tr. page 7).

The Supreme Court has quoted a provision of the Florida Constitution relating to **"unjust"** discrimination and the prevention thereof as applied to common carriers, and also as to "unjust" discrimination exercised by other public utilities, but, there is absolutely nothing in the record, except the quotation from the Florida Constitution used by the Court, which charges or in any way intimates that there has been any "unjust" discrimination (Tr. pages 15 and 50).

In the consideration of this case, **there is no denial that a valid contract exists between the State of Florida and the petitioner** (Tr. page 52) which not only recognizes the title and ownership of the petitioner, but the petitioner's right to operate the Venetian Causeway and charge reasonable toll for the use thereof; but, it is contended that the "unreasonable, arbitrary, excessive and extortionate rate" charged the bus company for the passage of a forty or fifty passenger bus when compared with the lesser rate charged for the operation of a five passenger automobile carrying passengers for hire, was sufficient to authorize the Legislature, relying upon the authority of the invisible and questionable police power, to pass an act which, **if applicable, would have directly impaired a validly executed and judicially approved contract** made between the State of Florida and the petitioner herein. The Supreme Court of Florida seems to have considered the bare possibility that there might be some unjust discrimination, that public safety, public health, public morals or the public welfare might at some time in the future and in some unforeseen manner be jeopardized, was sufficient to warrant the Legislature of the State of Florida in trampling upon the Federal Constitution.

It is our contention, however, that **the Legislature never intended the Act to affect the Venetian Causeway** or else they would have repealed or modified Section 347.20 of Chapter 347, Florida Statutes 1941 Compilation, which section restricted and controlled and prohibited the passage of Chapter 21,743 from impairing the validity of petitioner's contract.

The petitioner claims that this court has jurisdiction of the cause because of the fact that the Legislature of the State of Florida in passing Chapter 21,743, if it intended that said Chapter should apply to the bridge owned by the petitioner herein, has violated Section X of Article I of the Constitution of the United States by impairing a valid contract, and also the Fourteenth Amendment to the Constitution of the United States by depriving the petitioner of property without due process of law, and that the court erred in holding that Chapter 21,743 did apply to the bridge owned by the petitioner herein.

REASONS RELIED UPON TO WARRANT ISSUANCE OF WRIT AND SPECIFICATION OF ASSIGNED ERRORS WHICH WILL BE URGED BY THE PETITIONER.

The petitioner relies upon the following constitutional grounds for the issuance of a Writ of Certiorari:

1. The judgment and opinion of the Supreme Court of Florida deprives the petitioner, its stockholders and bondholders of vested rights (property), without consideration and without due process of law, and in direct violation of Section 347.20, Laws of Florida 1941 Com-

pilation and the 14th Amendment to the Constitution of the United States. (Plea No. 2, Tr. page 20.)

2. The passage of Chapter 21,743, held applicable to the Venetian Causeway by the Supreme Court of the State of Florida, impairs the obligations of a judicially validated contract between the State of Florida and the petitioner herein in direct violation of Section 10, Article 1 of the Constitution of the United States (Plea No. 3, Tr. page 23.)

The Court erred in holding that the record showed any cause or legal excuse sufficient to warrant the application or invocation of the police power of the State of Florida to evade the sacred prohibition of Section 10, Article 1 of the Federal Constitution,

> "No State shall * * * pass any * * * law impairing the obligation of contracts."

The police power should be exercised with great caution and only **when it is necessary** for the protection of the public against some act or deed that is or will probably be detrimental to public health, public safety, public morals or public welfare. No allegation in the pleadings even intimates that such a necessity or emergency existed at the time Chapter 21,743 was enacted or at the time the Act was construed by the Supreme Court of the State of Florida.

Several supplemental questions are necessarily presented:

First, Did the Supreme Court of the State of Florida

have jurisdiction of the cause?

Second, Did the Supreme Court of said State hand down a final judgment or decree construing or finally determining any federal question?

Third, Was any discrimination shown and alleged to have been **"unjust"** sufficient to have authorized the invocation of the police power?

The Railroad Commission of the State of Florida is endowed under our laws with judicial powers (see Section 350.63). Their principal duties however, are legislative. (See Section 350.12, 1941 Compiled Statutes.) The Railroad Commission was attempting, when the petition for certiorari was filed, to exercise its **legislative,** not its **judicial** power and to fix rates to be charged as toll for the use of the Venetian Causeway. While judicial power is vested in the Railroad Commission, such judicial power is not defined in such a way that it can be definitely determined whether the Act vested it with legal or equitable jurisdiction. The statute does not make any provision for the entry of an appeal in Chancery or for the suing out of a writ of error at law. A writ of prohibition would not lie to restrain the Railroad Commission from exercising its legislative functions. The Supreme Court of the State of Florida in the case of State vs. Railroad Commissioners, 79 Fla. 526, 84 So. 444, in paragraphs 9-11 recognized and declared the right of the Railroad Commission to make reasonable and just rates for freight and passenger traffic to be observed by railroads and common carriers, and concluded the case on page 448 by saying:

> "Such authority **is quasi legislative** and not quasi judicial in its nature, **and the common law writ of prohibition cannot be properly issued to prohibit the Railroad Commission from exercising their quasi legislative authority to prescribe just and reasonable rates of transportation to be charged by the Pensacola Electric Company in the City of Pensacola."**

Only one other remedy was available to present the issues involved to the Supreme Court of the State of Florida and that was the writ of certiorari. In the case of Greater Miami Development Corporation vs. Pinder, et al, 142 Fla. 390, 194 So. 867, the Court said:

> "It (referring to the writ of certiorari) is now employed in this State to review orders of the Railroad Commission and other administrative Boards."

Other cases showing that certiorari was a proper and the only remedy by means of which petitioner could obtain a judicial review are cited as follows: Sweat vs. Waldin, 123 Fla. 478, 167 So. 363, paragraphs 1 and 2, and in the case of Robbins Holding Company vs. Morris, 131 Fla. 205, 179 So. 404, paragraph 1, and Seaboard Airline Railway Co. vs. Wells, 100 Fla. page 1631, 131 So. 777, paragraphs 9 and 10.

The Supreme Court of the State of Florida held the petition for a writ of certiorari transferring the case from the Railroad Commission to it for consideration to be well taken, and issued the writ of certiorari. Process was served thereon upon the Florida Railroad Commis-

sion and a hearing was had before the Supreme Court of the State of Florida, at which hearing voluminous arguments and briefs were presented. Neither the attorneys representing the Railroad Commission nor the attorneys representing the bus company appearing as amici curiae questioned the jurisdiction of the Court or the propriety of the proceedings.

Second supplemental question: Did the Supreme Court of the State of Florida hand down a final judgment or decree in the certiorari proceedings construing or finally determining any federal question? (It did, Tr. 58 and 59.) In the recent case of Irving Trust Co. vs. Kaplan, reported by the Supreme Court of the State of Florida on October 31, 1944, and reported in 20 So. (2d) 351, on page 354 the Court said, in paragraphs 1-3:

> "A final judgment has been defined as one which determines and disposes of the whole merits of the cause before the Court by declaring that the plaintiff either is or is not entitled to recover by the remedy chosen **or completely and finally disposes of a branch of the cause which may be separate and distinct from other parts thereof.** See Lewisburg Bank v. Sheffey, 140 U. S. 445, 11 S. Ct. 755, 35 L. Ed. 493; Grant v. Phoenix Mut. Life Ins. Co., 106 U. S. 429, 1 S. Ct. 414, 27 L. Ed. 237."

The same doctrine has been enunciated in many federal cases.

"The denial of a writ of prohibition to prevent

> a lower court from taking jurisdiction of a controversy is final so as to be subject to review by the Supreme Court of the United States, although the original controversy is not determined." Missouri, ex rel., St. Louis, B. & M. R. Co. vs. Taylor, 266 U. S. 200, 69 L. Ed. 247.

To the same effect is the case of Mt. Vernon-Woodberry Cotton Duck Co. et al. vs. Alabama I. P. Co., 240 U. S. 28, 60 L. Ed. (U. S. Supreme) 510; Rector vs. U. S., 20 Fed. (2) 845-872. See also Winthrop Iron Co. et al. vs. Meeker, reported in 109 U. S. 180, 27 L. Ed. 898.

The third supplemental question: Was any discrimination shown **and alleged to have been unjust** sufficient to have authorized the invocation of the police power? The police power was invoked because of the allegations contained in the petition filed by the bus company with the Railroad Commission, Transcript page 14. This petition and this alone was the foundation for the discrimination referred to in the Opinion rendered by the Supreme Court and yet the word **"discrimination"** is not mentioned or referred to in said petition except in paragraph 10, which is the prayer for relief and in said prayer the railway (bus operating company) prayed for a hearing and asked the Commission to "prescribe a just, reasonable, non-preferential and non-discriminatory rate for buses using the said Venetian Way comparable to the rates charged by said Miami Bridge Company for the use of said Venetian Way by the automobiles carrying passengers for compensation of said Venetian Shortway, Inc., between the City of Miami and the City of Miami Beach, Florida." The petition does charge in paragraph

5 that the Bridge Company has been charging the bus company "an unreasonable, arbitrary, excessive and extortionate rate," to-wit: "Fifty cents **for each round trip passage**" over the expensive bridge owned by the Miami Bridge Company. By making this charge they, in effect, allege that the Legislature of the State of Florida was guilty of bad faith when they passed Chapter 10,497 in 1925 and authorized the Bridge Company to make a charge of fifty cents for each one way passage, or One Dollar per round trip for each bus operated over the Causeway, and in addition thereto Five cents for each passenger carried. The record clearly shows that no charge was made for any passenger carried and only Twenty-five cents was charged for each bus crossing the causeway **or Fifty cents per round trip.** They have alleged that the Bridge Company was charging a lesser rate per automobile for each automobile operated by Venetian Shortway, Inc., than the Bridge Company charged for the passage of a bus, and they have argued, but not alleged in their pleadings, that because of the difference so charged, the Bridge Company has been guilty of unjust discrimination. The Court will note **that the service rendered to the two corporations was entirely different,** that the petitioner herein in its petition for certiorari had offered to give the bus company the same rates after January 1, 1945, when their contract with Venetian Shortway, Inc., expired, provided the bus company would use the same kind of vehicles, that is, vehicles of the same weight and carrying capacity as those operated by the Venetian Shortway, Inc. **The service rendered was entirely different** and unjust discrimination could not be based upon it. The law upon discrimination is clearly enunciated in Volume 4 of McQuillin on Municipal Corporations, Art. 1697, on page 3589. Upon that page the

author said "discriminations are not forbidden, but only **unjust** discriminations."

> "For example, it is not an unjust discrimination to make to one patron a less rate than to another, where there exists differences in conditions affecting the expense or difficulty of performing the service which fairly justify a difference in rates."

Citing the following authorities:

> Williams v. Maysville Telephone Co., 119 Ky. 33, 82 S. W. 995; Western Union Tel. Co. v. Call Pub. Co., 44 Neb. 326, 62 N. W. 506.

In the case of Western Union Telegraph Company vs. Call Publishing Company, a case decided by this Honorable Court and reported in the 181 U. S. 92, 21 Sup. Ct. 561, 45 L. Ed. 765, this Honorable Court quoted with approval the language of the trial court, which reads as follows, to-wit:

> "You are instructed that not every discrimination in rates charged by a telegraph company is unjust. **In order to constitute an unjust discrimination, there must be a difference in rates under substantially similar conditions as to service**; the rate charged must be a reasonable rate; under like conditions it must render its services to all patrons on equal terms; it must not so discriminate in its rates to different patrons as to give one an undue preference over another.

> **"It is not an undue preference to make one patron a less rate than another where exist differences in conditions affecting the expense or difficulty in performing the services which fairly justify the difference in rates;** and where it is shown that a difference in rate exists, but there is also a substantial difference in conditions affecting the difficulty or expense of performing the service, no cause of action arises without evidence to show that the difference in rates is disproportionate to the difference in conditions."

After adopting with approval the charges so given, this Court said:

> "No one can doubt the inherent justice of the rules thus laid down."

First ground assigned for the issuance of a writ of certiorari. The Supreme Court of the State of Florida gave full faith and credit to each and every section contained in Chapter 347, excepting Section 347.20. (Tr. pages 51, 56 and 59.) Chapter 347 is entitled, "Ferries, Toll Bridges, Dams and Log Ditches," and contains twenty-five sections. Chapter 21,743, enacted in 1943, purported to amend one section and one section only of said Chapter, to-wit, Section 347.08. The act did not purport to repeal Section 347.20 and said section is still a part of the law of Florida. In volume 59 Corpus Juris, Article 595, the author said:

> "It is a cardinal rule of construction of statutes

> **that effect must be given, if possible, to the whole statute and every part thereof."**

In support of this proposition, the compiler cites nine columns of citations, among which are the following: Amos vs. Conklin reported in 99 Fla., page 206, 126 Southern Reporter, page 283, headnote No. 10 and paragraph No. 10; State vs. Amos, 76 Fla., page 26, 79 Southern Reporter, headnote 3, page 433. The headnote in this last cited case, which was prepared by the court, reads as follows, to-wit:

> "In construing a statute, the court must give force and effect to every part of it to carry out the intent of the Legislature, if possible, such intent to be ascertained from the language in the plain and natural meaning."

Chapter 21,743 provides that all laws and parts of laws in conflict herewith be and the same are hereby repealed, but Section 347.20 is not in conflict with Section 347.08 as amended. Chapter 21,743 **is not a special act** but **is a general act** which refers to all toll bridges now constructed or that may hereafter be constructed over and across any river, bay, bayou or other body of water, not exceeding four and one-half miles in width, in the State of Florida. The purpose of Section 347.20 was to prevent any person financially interested in toll bridges previously erected being unconstitutionally deprived of vested rights in such bridges and the right to operate the same, without due process of law. The 1943 act did not purport to be a recodification of the law relating to toll bridges, yet Chapter 347 is the only chap-

ter referring to toll bridges that is shown in the index to the Florida Statutes 1941 Compilation. The Supreme Court of the State of Florida has correctly enunciated the law to the effect that the doctrine of "in pari materia" would apply in the case at bar. This doctrine properly interpreted means that all statutes passed by the same law making power upon the same subject must be considered and construed together "as though they had originally constituted one enactment." Having correctly enunciated the law, the Supreme Court of Florida immediately proceeded to depart therefrom and to adopt as valid and binding all statutes relating to toll bridges and the operation thereof, save and except Section 347.20 which was equally as much a part of Chapter 347 as Section 347.08. Section 347.20 of Chapter 347, which was ignored by the Supreme Court of the State of Florida by its misapplication of the doctrine of "in pari materia," reads as follows:

> "Vested Rights Not Impaired. Nothing in this chapter shall affect or impair any right or privilege belonging to any individual or corporation by virtue of any law of this State."

If the act passed had been a special act and had specifically defined and identified the toll bridge owned by the Miami Bridge Company, and if it had been passed after notice, as required by the Florida Constitution, then it might have been argued that Section 347.20 had been repealed by the Amendment to Section 347.08, but being a general act which amended one section only of a well defined chapter which applied to all toll bridges heretofore or hereafter erected not exceeding four and

one-half miles in length, it cannot, under any circumstances, be construed to be a repeal of Section 347.20.

The Supreme Court of the State of Florida has clearly enunciated the law to the effect that repeals by implication are not favored and will not be deemed to have been intended unless that intention is clearly manifest. See:

> State v. Gadsden County, 58 So. 232, 63 Fla. 620; Dade County v. City of Miami, 82 So. 354, 77 Fla. 786; State v. Simpson, 114 So. 542, 94 Fla. 789; Stewart v. DeLand-Lake Helen Special Road and Bridge Dist. in Volusia County, 71 So. 42, 71 Fla. 158; Middleton v. State, 76 So. 785, 74 Fla. 234.

A special Act cannot be repealed by a General Act even though the general law is inconsistent with the special, unless the general act purports to make a general revision of the whole subject.

> Sparkman v. State, 71 So. 34, 71 Fla. 210; Sanders v. Howell, 74 So. 802, 73 Fla. 563; State v. Sanders, 85 So. 333, 79 Fla. 835; American Bakeries Co. v. Haines City, 180 So. 524, 131 Fla. 790; Langston v. Lundsford, 165 So. 898, 122 Fla. 813.

Assuming then that Section 347.20 was, in 1943, and is now a part of Chapter 347, the question arises, did the passage of Chapter 21,743 and its application to the Miami Bridge Company and its causeway impair vested rights? In Corpus Juris Secundum, Vol. 16, Article 215, under the title "Constitutional Law" the author said:

> "**Rights are vested** when the right to enjoyment, present or prospective, **has become the property** of some particular person or persons as a present interest." (Citing numerous authorities.)

This Honorable Court, however, has handed down a decision in which it has defined vested rights in unmistakable language as follows, to-wit:

> "**A vested right** has been defined as 'an immediate right of present enjoyment, or a present, fixed right of future enjoyment.' Pearsall v. Great Northern R. Co., 161 U. S. 646, 16 S. Ct. 705, 713, 40 L. Ed. 838."

The definition last given has been quoted with approval by the Supreme Court of Florida in the case of Sanford v. McClelland, reported in 163 So. page 513, 121 Fla. page 253.

Chapter 21,743 purports to vest in the Railroad Commission the right, as to all bridges affected thereby, to "**fix and regulate tolls, charges, uses** and **hours for keeping open** for traffic." **This would necessarily deprive the owners of the bridge, if the act was intended to apply and did apply** to the Venetian Causeway, **of the right to regulate and fix tolls, charges, uses and hours for keeping open,** which would unquestionably be depriving the petitioner of such vested rights **based upon a valid contract in property of great value to petitioners.** To sustain the above contention it is only necessary to cite the 14th Amendment to the federal Constitution.

The Supreme Court of the United States, in the case of Liggett v. Baldrige, reported in the 278th U. S. page 104, 73rd L. Ed., page 204, commenting both on the protection of property rights and also upon the time when and under what circumstances the police power should be exercised, said:

> "A state cannot, 'under the guise of protecting the public, arbitrarily interfere with private business or prohibit lawful occupations or impose unreasonable and unnecessary restrictions upon them'." (Citing numerous decisions from this honorable Court.)

The law as above enunciated has been clearly stated and adopted by the Supreme Court of the State of Florida. In the case of Cawthon v. Town of DeFuniak Springs et al., reported in 88 Florida, page 324, 102 So. Rep. 250, the court said:

> "5. Municipal corporations—Statute cannot authorize municipality to violate organic right of individual. A statute cannot legally authorize a municipality to violate any organic right of an individual, even though the statute in terms attempts to confer such a power."

And again in the same case, the court said:

> "* * * the Legislature can legally authorize the exercise of the police power **only for proper purposes and only to the extent that is necessary to conserve the public welfare in the premises.** A

statute cannot legally authorize a municipality to violate any organic right of an individual, even though the statute in terms attempts to confer a power that violates a private right that is secured by the Constitution. **The rights of individuals are measured by constitutional provisions** and not by statutes that in terms or by practical operation invade private rights."

In the case of Maxwell v. City of Miami, 87 Florida, page 107, 100 So. Rep. 147, our Supreme Court said:

"Municipalities are given police powers to conserve, not to impair, private rights. The organic law contains limitations upon police and municipal powers that may be sought to be conferred by statute."

The police power should never be exercised unless a public necessity exists, and can be exercised only when public health, public safety, public welfare, public morals are jeopardized or threatened.

For other Florida cases see:

State v. Yeats, 74 Fla. page 509, 77 So. Rep. 262;
Eccles v. Stone, 134, Fla. page 113, 183 So. 628;
Whitaker v. Parsons, 80 Fla. 352, 86 So. 247.

The second reason relied upon to warrant the issuance of the writ of certiorari is certainly well founded. If Chapter 21,743, Acts of 1943, applies to the Venetian Causeway, it would **"impair the obligations"** of a solemn

contract made with legislative sanction by the State of Florida with those who were ready, able and willing to spend, and who did spend, approximately one and one-half million dollars in constructing a toll bridge or causeway across Biscayne Bay North of the then existing County Causeway.

Pleas 1, 2 and 3 show that the contract tendered by the State was accepted; that the bridge was built; that the petitioner herein is now and has for many years last past been the owner, holder and operator of said causeway. The contract has been held by the Supreme Court of the State of Florida in re Miami Bridge Co. vs. Miami Beach Ry. Co., to be a valid contract. In 12 Southern Reporter, 2d Series, page 438, 152 Fla., page 458, the court, commenting on petitioner's right to collect toll, on page 443 said:

> "The presumption is that the legislative rate is a reasonable rate until after full hearing on pleadings and evidence the court determines otherwise. **The legislature, in said chapter 10497,** the defendant's franchise act, **had provided that defendant might charge a toll not exceeding fifty cents per bus,** including driver, and five cents for each passenger. This provision of the act should have been left in full force and effect until the evidence for both sides had been taken and the court's findings on the evidence had been arrived at."

In the same case, on page 446, the Supreme Court of the State of Florida said:

> **"It would then be the duty of this public utility to make a rate for the passage of buses over its causeway and bridges** which **would not be unreasonable** in the light of the court's decision."

In the opinion from which relief is now sought rendered by the Supreme Court of Florida on the 19th day of December, 1944, in reviewing the finding made by the Railroad Commission, the Court said:

> "**This Act** (referring to Chapter 10,497, Special Acts of 1925, Laws of Florida) **granted a franchise and authorized the Bridge Company to fix a rate or rates chargeable** to be paid by the petitioner (referring to The Miami Beach Railway Company) **for the passage of its buses over the bridge** operated by it and known as the Venetian Way."

The above quoted opinions in effect hold that a valid contract was made between the State of Florida and the Miami Bridge Company; that Chapter 10,497, Acts of 1925, was a valid law and that said act granted a franchise to the Miami Bridge Company and its predecessors in title, and authorized the Miami Bridge Company to fix a rate or rates to be paid by anyone operating buses over the bridge owned by the Miami Bridge Company, known as the Venetian Way. To apply Chapter 21,743 to the Venetian Causeway would be to impair the contract made between the State of Florida and the petitioner herein, and would destroy the right of the petitioner herein to fix and regulate toll charges, uses and hours for keeping open for traffic, all of which rights were vested in the petitioner herein under Chapter 10,497.

To sustain the second reason for the issuance of a writ of certiorari, it is only necessary to cite Section Ten (10) of Article I of the federal Constitution; but as this honorable Court has so clearly sustained the constitutional provisions prohibiting the impairment of contracts by state legislation, we deem it advisable to cite a few important decisions. We refer the Court to the case of Superior Water, Light & Power Co. v. Superior, reported in the 263rd U. S. Supreme Court Reports, page 125, Volume 68 L. Ed., page 204. In this case the court said:

> "The integrity of contracts—matter of high public concern—is guaranteed against action like that here disclosed by sec. 10, art. 1, of the Federal Constitution: 'No state shall . . . pass any . . . law impairing the obligation of contracts.' It was beyond the competency of the legislature to substitute an 'indeterminate permit' for rights acquired under a very clear contract. Vicksburg v. Vicksburg Waterworks Co., 206 U. S. 496, 51 L. Ed. 1155, 27 Sup. Ct. Rep. 762; Detroit United R. Co. v. Michigan, 242 U. S. 238, 253, 61 L. Ed. 268, 275, P.U.R. 1917B, 1010, 37 Sup. Ct., Rep. 87.

The Supreme Court of the State of Florida has several times held that even a constitutional amendment, which is necessarily backed by a legislative act, cannot impair the obligation of a contract to pay a bonded indebtedness by relieving a portion of the property in the taxing district, issuing said bonds from taxation by holding said property, under constitutional amendment, to be exempt from taxation.

Board of Public Instruction v. State, 145 Fla. 482,

199 So. 760; State v. Palm Beach Dist., 121 Fla. 746, 164 So. 851; State v. Boring, 121 Fla. 781, 164 So. 859.

In American Jurisprudence, Volume 12, the author in Article 399 lays down the law as follows:

"Not only private contracts are protected from impairment by state laws, but also contracts made by a state with individuals and corporations and also with other states. The legislature of a state may make contracts on many subjects which will bind it, and will bind succeeding legislatures for the time the contract has to run." Citing:

Butchers' Union S. H. & L. S. L. Co. v. Crescent City L. S. L. & S. H. Co., 111 U. S. 746, 28 L. Ed. 585, 4 S. Ct. 652.

In paragraph 406 the author said:

"It has become the established law that a legislative enactment, in the ordinary form of a statute, may contain provisions which, when accepted as the basis of action by individuals or corporations, become contracts between them and the state within the protection of the clause of the Federal Constitution forbidding impairment of contract obligations; and when such a right has arisen, the repeal of the statute does not affect the right or an action for its enforcement."

Under paragraph 406, page 39, the author said:

> "Where, however, **the exclusive power to fix rates within a certain maximum is also conferred on the recipient of the franchise, a subsequent attempt by the state to fix such rates is invalid as an impairment of the obligation of a contract.**"
>
> Citing:
>
> Pingree v. Michigan C. R. Co., 118 Mich. 314, 76 N. W. 635, 53 L. R. A. 274 Annotation: Ann. Cas. 1913D 89,

in which case the Supreme Court of Michigan in its syllabus used the following language, to-wit:

> "The legislature has the power to fix the rate which railroad companies may charge within certain limits.
>
> "The legislature may confer upon a railroad company the exclusive power to fix its rates for the transportation of passengers and freight within a certain maximum, and a subsequent attempt by the legislature to fix such rates is invalid as the impairment of the obligation of a contract."

The Supreme Court of Mississippi, in the case of Stone vs. Yazoo and Mississippi Valley Railroad Company, 62 Miss. 607, 52 Am. Rep. 193, in the body of the case on page 203 used the following language, to-wit:

> "The appellee has the unquestionable right from time to time, by its board of directors, to fix the

rates at which it will transport over its railroads, **provided those rates shall not exceed the maximum prescribed by the charter. That is the contract. These terms were expressly made. On the faith of them capital was invested and the enterprise set on foot. It is not allowable now for one of the contracting parties to interfere with the exercise by the other of its plainly granted rights. They are secured beyond the reach of legislation and cannot be impaired.**

This case condensed rests upon:

1. The contract, Chapter 10,497, Acts of 1925, attached to plaintiff's petition, filed herein and identified as Exhibit "A."

2. Chapter 21,743, Acts of 1943, attached to original petition and identified as Exhibit "B."

3. Chapter 347, Florida Statutes, 1941, copy of which is attached to petition, and identified as Exhibit "C."

4. Petition filed by Miami Beach Railway (Bus) Company with The Railroad Commission, Tr. page 14.

5. Pleas 1, 2 and 3 filed by the Miami Bridge Company, Tr. pages 17, 20 and 23.

6. That portion of the opinion of the Supreme Court of Florida reading as follows:

"The effect of Chapter 21743, supra, is simply **to transfer the power and authority to fix the**

> **amount of the rate to be paid by the public for the use of the 'Venetian Way' from Miami Bridge Company, its present owner, with additional minor regulations, to the Florida Railroad Commission.** * * *

If the judgment rendered by The Railroad Commission was not a final judgment, the judgment rendered by the Supreme Court, as shown by the above quotation, certainly was, and the effect thereof was to impair and practically destroy petitioner's contract.

We call the Court's attention to another recent Florida case, to-wit, the case of Bedell vs. Lassiter, reported in 196 So. page 699, 143 Florida, page 43, wherein the Supreme Court of the State of Florida, said:

> **"Any statute enacted by the Legislature impairing the obligation of a contract is void."** See Cragin v. Ocean & Lake Realty Co., 101 Fla. 1324, 133 So. 569, 135 So. 795.

We also call the court's attention to the case of Rorick vs. Board of Commissioners of Everglades Drainage District, 57 Fed. (2) 1048, wherein the Court said:

> "A State is as capable of making a contract and is as much bound thereby as an individual."

The Supreme Court of Florida in its opinion has referred to Section 30 of Article 16 of the Constitution of Florida, but said provision does not apply unless the record in the case shows "unjust discrimination" and excessive charges by persons and corporations rendering

services of a public nature, and we insist upon the proposition that there is nothing in the record which discloses "unjust discrimination" or excessive charges. The section aforesaid applies primarily to those engaged in the transportation of persons and property.

If the attorneys for the Florida Railroad Commission rely upon the Florida Constitution to sustain the validity of Chapter 21,743, they should not forget that the Florida Constitution, in Section 17, Declaration of Rights, contains another provision reading as follows:

> "No bill of attainder or ex post facto law nor any law impairing the obligation of contracts shall ever be passed."

This court will take judicial cognizance that buses and trucks are more destructive to highways and bridges than ordinary automobiles, and for that reason practically every State in the Union imposes a much higher license tax for the operation of same.

We believe the Constitution of the United States should be upheld.

Respectfully submitted,

Attorney for Petitioner,
Miami Bridge Company.